UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1461

JAY BONANZA BRILEY; CONSTANCE H. BRILEY,

                  Petitioners - Appellants,

         v.

COMMISSIONER OF INTERNAL REVENUE,

                  Respondent - Appellee.

Appeal from the United States Tax Court.
(Tax Ct. No. 31182-09)

Submitted: November 19, 2015   Decided: November 23, 2015

Before NIEMEYER, KING, and HARRIS, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Jay Bonanza Briley, Constance H. Briley, Appellants Pro Se.
Bruce R. Ellisen, John A. Nolet, UNITED STATES DEPARTMENT OF
JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jay Bonanza Briley and Constance H. Briley appeal from the tax court's orders upholding the Commissioner's deficiency determination as to their 2004 and 2005 income tax liabilities and assessment of penalties, and denying their motion to vacate that order. On appeal, the Commissioner asserts that the tax court lacked jurisdiction due to the Brileys' late filing of their petition for redetermination. The timely filing of a tax court petition is a jurisdictional prerequisite. 26 U.S.C. § 6213(a) (2012). The Brileys' deadline for filing their petition was December 22, 2009. Their petition was postmarked December 23, 2009. See 26 U.S.C. § 7502 (2012) (deeming petition filed when properly mailed). Because the petition was not timely filed, the tax court lacked jurisdiction to address the Brileys' petition. See 26 U.S.C. § 6213(a) ("The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed.").

Accordingly, we vacate the tax court's orders and remand this case to the tax court with instructions to dismiss the petition for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately

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presented in the materials before this court and argument would

not aid the decisional process.

<div align="right">VACATED AND REMANDED</div>